

2001-014-111



jbell@encompserv.com on 06/29/2001 01:22:50 PM

To: Farcase.2001-014@gsa.gov  
cc:

Subject: Revoke Blacklisting regulation

General Services Administration  
FAR Secretariat  
1800 F Street, NW. Room 4035  
ATTN: Laurie Duarte  
Washington, DC 20405  
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Dear Sir or Madam:

I support the Federal Acquisition Regulation Council's immediate suspension and proposed revocation of the blacklisting regulation for the following reasons:

\* The FAR Council has acted arbitrarily by failing to articulate any rational basis or need for this significant change in the FAR responsibility standards; ignoring the concerns raised by the government's own procurement professionals that the government lacks the expertise and resources needed to implement the Rule; failing to demonstrate that any benefits of this change offsets its enormous costs; and irrationally removing the requirement of a nexus between responsibility and a contractor's ability to perform a particular contract.

\* By allowing individual federal agencies to deny contracts based upon violations of any law, the FAR Council has exceeded its authority to promulgate procurement regulations, and has effectively amended by administrative fiat substantive federal laws that are addressed by the Final Rule -including the National Labor Relations Act ("NLRA").

\* In issuing the Final Rule, the FAR Council for the first time informed interested parties that the changes to FAR Part 9 now include evaluation of their compliance with "the law," including all state and foreign laws, and that changes to FAR Part 52 now require contractors to certify to their compliance with state felony laws. By failing to notify contractors of these dramatic changes during the public comment period, the FAR Council has deprived interested parties of a meaningful opportunity to participate in this important aspect of the rulemaking.

\* The Final Rule allows the government to deny federal contracts without affording contractors minimal due process protections, and is so vague that it fails to provide contractors or the government with sufficient notice of the standards to be applied and evidence to be considered in making a determination of responsibility.

\* The amendment to the FAR certification provision for commercial item acquisitions is in direct violation of statutes forbidding specific certifications in the procurement of commercial items.

\* The changes to Part 31 conflict with the Major Fraud Act, which dictates when legal costs are recoverable, as well as the FAR Council's own stated policy of remaining neutral in matters of labor relations.

\* The FAR Council failed in its obligations, under the Paperwork

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Reduction Act ("PRA") and the Regulatory Flexibility Act ("RFA"), to evaluate properly the Final Rule's paperwork burden and its impact on small businesses.

Sincerely,

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